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W.P. Nos.42236/2025 Batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
10.06.2026	16.06.2026

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**W.P. NOS. 42236, 42225, 42226, 42141, 42223, 42245, 42509, 42512,
42521, 42517, 42530, 42527 OF 2025**

AND

**W.M.P. NOS. 47294, 47276, 47277, 47191, 47286, 47274, 47594,
47588, 47586, 47582, 47580, 47593 OF 2025**

W.P. NO.42236 OF 2025

R.Somasundaram

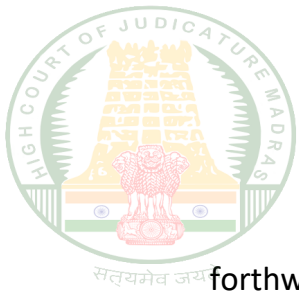
.. Petitioner

- Vs -

Assistant Commissioner of
Customs (Refunds-Air)
Chennai Airport Commissionerate
New Custom House
Meenambakkam, Chennai 600 016.

.. Respondent

W.P. No.42236 of 2025 filed under Article 226 of the Constitution of India
praying this Court to issue a writ of certiorarified mandamus calling for the
records of the respondent which culminated in issue of the impugned Order in
Original No.59/2025-Prev Refunds (CH-I) dated 25.08.2025 passed by the
respondent and quash the same and consequently directing the respondent to



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forthwith pay the amount equivalent to the value of the seized/confiscated 93.500 grams of gold jewellery as per current market value prevailing as on date of refund.

For Petitioners : Mr. G.Natarajan

For Respondent : Mr. K.S.Ramaswamy, CGSC

COMMON ORDER

Seeking payment of prevailing market value as on date of refund with regard to the seized/confiscated gold from the respective petitioners in line with the De-Novo order passed by the Joint Commissioner of Customs by quashing the order of the respondent in and by which market value has been computed on the basis of the tariff value of the gold on the date of such transfer to SPMCIL, which is against the De-Novo order, the present writ petitions have been filed.

2. Since the issue involved in all the writ petitions are one and the same, the common facts, barring the specific dates, are captured in this order without placing any specific reliance on the dates.

3. The facts, as could be culled out from the composite materials forming part of the typed set in all the petitions, is briefly stated thus :-



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4. The respective petitioners, returning back from overseas destinations on various dates during the month of July, 2013, as mentioned in the writ petitions, while trying to pass through the green channel, were stopped and upon search, gold of various quantities and certain electronic items were seized from the petitioners, which were not declared by the petitioners. Upon seizure of the same, the petitioners were arrested, but were thereafter released and proceedings were initiated.

5. It is further averred that show cause notice was issued to the respective petitioners on various dated u/s 124 of the Customs Act (for short 'the Act') proposing that the goods imported by them are liable for confiscation u/s 111 (d) and 111 (l) of the Act and further proposing imposition of penalties on the petitioners u/s 112 and 114 of the Act.

6. It is the further averment of the petitioners that after due process of law, the adjudicating authority, vide the respective Order in Original ordered absolute confiscation of the seized goods u/s 111 (d) and 111 (l) and imposed penalties on the petitioners u/s 112 (a) and 114 (i) of the Act r/w Foreign Trader (Development & Regulations) Act, 1992. However, redemption was allowed in



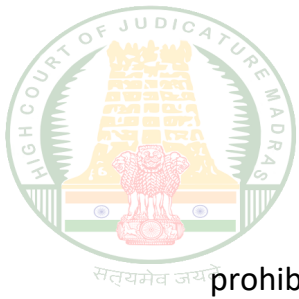
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respect of the electronic goods alone on payment of redemption fine of 25% on the value of the electronic goods.

7. Aggrieved by the order of the adjudicating authority, the petitioners herein filed the respective appeals before the Commissioner (Appeals-I) and vide common order in Appeal Nos.5 to 17 of 2014 dated 28.10.2014 upheld the order of the adjudicating authority and rejected the appeal against which the petitioners filed review application before the revisional authority, viz., the Government and vide common order No.269 to 281/2021 dated 27.10.2021, the review applications were dismissed upholding the order passed by the appellate authority by holding that the gold brought by non-eligible persons without fulfilling the required conditions would render the goods as prohibited goods.

8. It is the further averment of the petitioners that against the said revisional order, writ petitions were preferred by the petitioners and this Court, pleading that absolute confiscation of gold was not legal and that the petitioners should have been given option to redeem the same on payment of redemption fine u/s 125 of the Act. This Court, vide common order dated 2.1.2025 in W.P. Nos.61/2022, Batch, while held that the seized gold cannot be considered as



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prohibited goods with effect from 6.6.1990 following the repeal of the Gold (Control) Act, 1968, could only be considered as a restricted item and, therefore, held that absolute confiscation was not warranted and that the adjudicating authority ought to have given the option of redemption to the petitioners as contemplated u/s 125 of the Act. Therefore, the learned single Judge remanded the matter to the Joint Commissioner of Customs (Adjudication Air) with a direction to impose appropriate redemption fine on the petitioner taking into account the value of the gold attempted to be smuggled within a particular time frame.

9. It is the further averment of the petitioners that upon remand, in compliance with the directions of this Court, the Joint Commissioner of Customs (Adjudication Air), vide the De-Novo order in Original No.21/2025-2026 dated 2.5.2025, while ordered confiscation of the gold and the electronic goods, however, granted option to the petitioners to redeem the gold on payment of quantified redemption fine u/s 125 along with payment of applicable customs duty and imposed penalties u/s 112 (a) and 114 (i) of the Act.



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10. It is the further averment of the petitioners that consequent upon the De-Novo, the petitioners approached the department for redemption of the gold on payment of duties, penalties and redemption fine vide their respective letters by submitting that they are willing to pay the redemption fine, penalty u/s 112 (a) and applicable customs duty on the seized gold, however, were paying the penalty imposed u/s 114 (i) of the Act under protest, by placing that they intend to file appeal against the imposition of penalty u/s 114 (i). Further, the petitioners also expressed their inclination not to clear the electronic goods. On the above, it is the further averment of the petitioners that they requested the authority to provide the working sheet to enable the remittance of the amount for redeeming the gold. It is the further averment of the petitioners that there was no response to the said representation, which prompted the petitioners to file application along with copy of all the orders, including the order of the Joint Commissioner permitting redemption of the gold seized or to refund the amount equal to the value of the seized gold. It is the further averment of the petitioner that the said application of the petitioners was processed resulting in the passing of the respective impugned orders in which while arriving at the amount payable to the petitioners in lieu of return of the gold, inasmuch as the seized gold ornament had already been disposed of, reliance was placed by the respondent



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on CBEC's Instruction No.22/2022 dated 6.9.2022, wherein, in para 3.1.2, it has been laid down that the determination of the amount of sale proceeds of gold while refunding the amount in lieu of gold seized should be calculated based on the tariff value of gold on the date of transfer of such seized/confiscated gold to the Securities Printing and Minting Corporation of India Ltd. (for short 'SPMCIL'). Based on the said circular, the quantification of payment of refund has been passed by the respondent aggrieved by which the present writ petitions have been filed by the petitioners.

11. Learned counsel appearing for the petitioners submit that the impugned order of the respondent refunding only the amount for the seized gold by computing the value as on the date of its transfer to SPMCIL is wholly untenable, unreasonable and arbitrary. It is the further submission of the learned counsel that the reliance placed on CBEC's instruction No.22/2022 dated 6.9.2022 was wholly erroneous, as the gold was disposed of even as early as in the year 2014 without even any notice to the petitioners.

12. In this regard, learned counsel for the petitioners drew the attention of this Court to circular of CBEC, Government of India, Ministry of Finance in F.

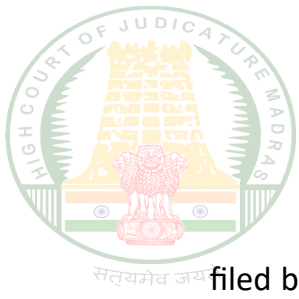


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No.711/4/2006-Cus.(AS) dated 14.2.2006, wherein it has clearly been stipulated that where the owner of the goods has not exhausted all the appeal/legal remedies in respect of goods that have been confiscated, it is incumbent on the part of the respondent to issue notice to the owner of the goods before disposing of the same by way of sale. It is the submission of the learned counsel that before the sale of the gold by way of public auction, no notice was issued to the petitioners informing about the said public auction sale and, therefore, there is a flagrant violation of not only the circular, but also principles of natural justice. It is the further submission of the learned counsel that the failure to inform the petitioners about the disposal of the seized goods prior to the conclusion of the appellate proceedings is grossly and procedurally improper.

13. It is the further submission of the learned counsel that the manner in which the seized and confiscated goods should be disposed of is spelt u/s 110 (1A) and (1B). However, inspite of the fact that the goods were disposed of, the said factum was not brought on record while passing the order in appeal dated 28.10.2014 nor was it spelt out during the disposal of the revision application, nor before this Court and not even during the time when the matter was reheard after remand and order was passed. It was only when refund application was



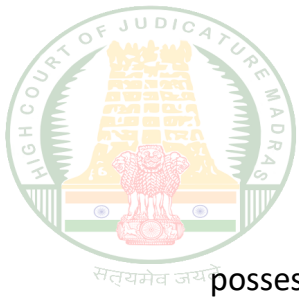
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filed before the respondent the factum of disposal of the seized gold even in the year 2014 had come to light.

14. It is the further submission of the learned counsel that before selling/disposing of the seized commodity, it is incumbent on the officials of Customs to follow the procedure laid down u/s 150 of the Act, by issuing notice to the owner of the goods, but no notice has been issued to the petitioners and, in fact, it is not even the case of the respondent that notice was issued to the petitioners.

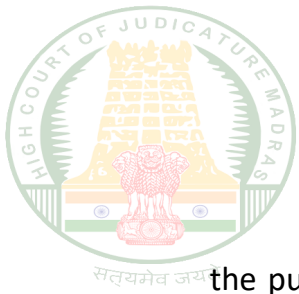
15. It is the further submission of the learned counsel that the attitude of the respondent would be writ large on the face of the record as even at the time of the order passed in the de novo adjudication proceedings, in which the order of absolute confiscation was set aside and redemption of the seized goods was permitted to be taken back upon payment of redemption fine, the respondent has not spelt out that the seized gold has been sold. In this backdrop, it is the submission of the learned counsel that upon the de novo order being passed permitting redemption of the seized gold upon payment of redemption fine customs duty and other penalties, the respondent is obligated to either restore



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possession of the confiscated gold or to pay the value equivalent to the prevailing market value of the said gold as on date of refund to the petitioner after recovering any dues lawfully recoverable and any failure to comply with the same would only amount to non-implementation of the de-novo order passed, which is pursuant to the directions of this Court.

16. It is the further submission of the learned counsel that the gold was neither a perishable nor hazardous commodity and, therefore, there was no justification for the authorities to proceed with the disposal of the same in haste, more importantly without issuing any notice to the petitioner. It is the further submission of the learned counsel that though the respondent takes shelter that the seized gold was disposed of as per para 3.1.2 of Board's Instruction No.22/2022 dated 6.9.2022, that would not bar the petitioners from getting the market value of the gold, as the disposal of the gold through public auction without notice to the petitioners is arbitrary and if notice had been issued, the petitioners would have participated in the auction and purchased the property and upon coming out successful in the de novo proceedings, the petitioners would only be required to pay the penalties, redemption fine and customs duty, while the amount, which was paid by the petitioners in securing the gold through



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the public auction would have been returned to the petitioners. In view of the procedural lapse committed by the respondent, the petitioners cannot be made to suffer.

17. It is the further submission of the learned counsel that when an order has been passed for redemption, necessarily, it is incumbent on the part of the respondent to honour the said order and redeem the said commodity back to the owner and in the present case, the respondent ought to have returned the gold back to the petitioners upon the order in the de novo proceedings. If the gold had been sold without notice to the petitioners and without following the procedure prescribed under the CBEC circular dated 14.2.2006, then the only course open to the respondent is to return the value of the gold at the market price on the date of redemption and the benefit of the petitioners cannot be curtailed by way of the circular of the year 2022, that too when the sale of the gold was not put forth before this Court, which had directed the authority to consider the issue of redemption vide its order dated 02.01.2025 even at which point of time, the Court was not informed about the sale of the seized gold.



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18. In fine, it is the submission of the learned counsel that non-issuance of notice before sale of the seized gold is not only fatal to the case of the respondent, but the respondent is bound to return the seized gold back to the petitioners or else to refund the market value of the gold as on date, which is the explicit direction issued by the Joint Commissioner in his order on remand and, therefore, markedly deviating from the said order is grossly erroneous and is nothing but an act of unjust enrichment and, therefore, the said order deserves interference.

19. In support of the aforesaid submission with regard to the rate at which the seized commodity should be returned to the owner of the goods, if the seized goods are not returned, learned counsel for the petitioners placed reliance on the following decisions :-

- i) *Leyla Mohmoodi – Vs – Addl. Commissioner of Customs (MANU/MH/5175/2023);*
- ii) *Gor Sharian – Vs – Commissioner of Customs (MANU/DE/1000/2025); and*
- iii) *Sudeep Sikri – Vs – Commissioner of Customs (Delhi HC – W.P. (C) No.11889/2025 – Dated 18.08.2025)*



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20. Per contra, learned standing counsel appearing for the respondent, drawing the attention of this Court to the common counter affidavit, submitted that upon seizure and after passing of the absolute confiscation order dated 25.04.2014, the gold, weighing 1659.200 grams belonging to the 12 petitioners the same was handed over to the Government of India, Mint, Mumbai on 17.10.2014 and the amount of Rs.43,84,467/- realised was deposited on 6.1.2015.

21. It is the further submission of the learned counsel that pursuant to the de novo order, in compliance thereof, following the CBEC's circular dated 6.9.2022, the refund was sanctioned to the petitioners by fixing the value of the gold as per the aforesaid circular after deducting the redemption fine, penalties and customs duty payable by the petitioners and, therefore, the said fixation of value is based on the circular and, therefore, the same is proper.

22. It is the further submission of the learned counsel that the disposal of the seized gold was never concealed before any of the authorities or even the judicial forum as all the adjudicating authorities, including this Court, was deciding on the legality of the confiscation and not questions relating to refund or



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return at that stage and, therefore, the disposal has no bearing and that refund becomes relevant only after permission is granted for redemption of the confiscated gold. Therefore, it is submitted that the plea of suppression, concealment or violation canvassed by the petitioners cannot be countenanced.

23. It is the further submission of the learned counsel that with regard to the correspondence including the issue of notice is not available readily with the respondent, as the whole case pertains to the year 2013 and as such the record of correspondence is not traceable. However, it is submitted by the learned counsel that all the procedures contemplated under the Act have been scrupulously followed.

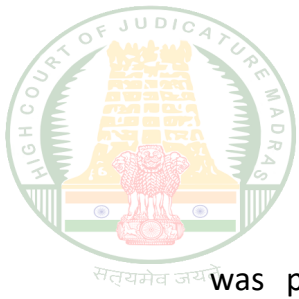
24. It is further submitted that even otherwise notice u/s 150 applies only in respect of goods that are to be sold otherwise than as seized or confiscated goods, but the present gold was seized and provisionally disposed u/s 110 (1A) and sent to SPMCIL as per the standing instructions and, therefore, Section 150 of the Act has no application in respect of disposal of seized/confiscated gold and, therefore, notice u/s 150 does not arise at all.



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25. It is the further submission of the learned counsel that the contention of the petitioners that the respondent is legally bound to restore possession of the confiscated gold on payment of applicable duties is not correct. Upon passing of adjudication order on 25.4.2013, the gold was handed over to the Government Mint on 17.10.2014. Though the confiscated gold was ordered to be released through the De Novo order dated 2.5.2025, which is after disposal of the gold, the respondent, after deducting the applicable duties, penalties and redemption fine, applying Board's Instruction No.22/2022, dated 6.9.2022 had refunded the gold at the rate on which it was confiscated. The seizure and disposal of the gold was done strictly in accordance with the provisions of the Act and the Disposal Manual and gold due to its nature, value, storage and security, necessitated expeditious disposal and further the auction was conducted on 31.12.2014.

26. It is the further submission of the learned counsel that the Board's Instruction No.22/2022 dated 6.9.2022 prescribes the manner in which the amount of sale proceeds relating to gold is to be determined while refunding the amount in lieu of gold seized. Applying the said instruction, the gold, which was confiscated in the year 2013 has been refunded by applying the rate of gold as



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was prevailing them by following the procedures in accordance with the provisions of the Act.

27. It is the further submission of the learned counsel, by placing reliance upon CBEC Circular No.F.No.711/4/2006-Cus. (AS) dated 14.2.2006 that notice to the owner is contemplated only in respect of the goods which have not been confiscated goods and which are to be sold under the provisions of the Act. However, in the present case, the goods being confiscated goods, no notice is contemplated under the Act and, therefore, the non-issuance of notice to the petitioners would not in any way be a violation of principles of natural justice. Therefore, on the above contentions, learned standing counsel prayed for dismissal of the petitions.

28. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

29. The facts of the case with regard to the confiscation of the goods from the petitioner due to the goods having not been declared on arrival by the



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petitioners have not been assailed. The gold, upon the order of adjudication dated 25.4.2014 confiscated and the same was handed over to the Government Mint on 17.10.2014 and later disposed of through auction on 31.12.2014 and the sale proceeds was deposited through challan on 6.1.2015.

30. Upon the order of adjudication being passed on 25.4.2014, appeal was filed by the petitioners in which an order had come to be passed on 28.10.2014. However, after the order in appeal, revision was filed by the petitioners and it is not in dispute that the said revisions were filed on time.

31. A perusal of the records reveal that upon the revision being filed in the year 2014, order came to be passed on 27.10.2021 confirming the appellate order. Against the said order, writ petitions were filed before this Court in W.P. Nos.61/2022, etc. Batch, in which this Court passed the following order :-

“41. The import of gold is not prohibited. Rather, it is restricted and regulated. Therefore, any person carrying gold ornament ought to have paid appropriate customs duty if whether such gold jewellery/ornament was worn in person or kept in the “baggage”.

42. Absolute confiscation of the imported quantity of gold in the hands of each of these petitioners cannot be ordered to



be absolutely confiscated under Section 125 of the Customs Act, 1962.

43. The option ought to have been given to the owner of such gold to redeem in lieu of confiscation under Section 125 of the Customs Act, 1962. Therefore, the Order rejecting the request for redemption or reexport cannot be sustained.

44. Considering the fact that the goods are not absolutely confiscable, the th Court is of the view that the Impugned Order dated 25.10.2021 passed by the 4 respondent, holding the goods are not redeemable and is not liable to be confiscated is to be interfered with.”

32. Vide the aforesaid order, this Court had held that “*option ought to have been given to the owner of such gold to redeem in lieu of confiscation under Section 125 of the Customs Act, 1962. Therefore, the order rejecting the request for redemption or reexport cannot be sustained*”. However, against this order, no appeal has been filed by the respondent. Pursuant to the aforesaid order, the De Novo order had come to be passed on 2.5.2025 in which the order of confiscation, while upheld, however, it was modified from one of absolute to confiscation to one of redemption and option for *redemption of the seized crude gold was given to the respective petitioners on payment of redemption fine.*



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33. In this regard, it is to be noted that vide the aforesaid order, there is a categorical order that redemption of seized crude gold of 24K purity was given as option to the petitioners on payment of redemption fine. The said order has been accepted by the respondent and no further judicial/administrative remedy was sought for by the respondent.

34. In this backdrop of the position, the issue has to be looked into by this Court. There is no quarrel with the fact that upon the petitioners arriving at the airport, the goods were seized by the authorities and for the said seizure, recourse has to be taken to Section 110 of the Act. The goods in this case seized is gold and the procedure to be adopted while dealing with the said commodity is spelt out and the same is quoted for better appreciation :-

“110. Seizure of goods, documents and things. – (1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:

Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.

(1A) The Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in



the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (1), be disposed of by the proper officer in such manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified.

(1B) Where any goods, being goods specified under sub-section (1A), have been seized by a proper officer under sub-section (1), he shall prepare an inventory of such goods containing such details relating to their description, quality, quantity, mark, numbers, country of origin and other particulars as the proper officer may consider relevant to the identity of the goods in any proceedings under this Act and shall make an application to a Magistrate for the purpose of -

(a) certifying the correctness of the inventory so prepared;

or

(b) taking, in the presence of the Magistrate, photographs of such goods, and certifying such photographs as true; or

(c) allowing to draw representative samples of such goods, in the presence of the Magistrate, and certifying the correctness of any list of samples so drawn.

(1C) Where an application is made under sub-section (1B), the Magistrate shall, as soon as may be, allow the application.

(2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods



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shall be returned to the person from whose possession they were seized :

Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the Commissioner of Customs for a period not exceeding six months.

(3)The proper officer may seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act.

(4)The person from whose custody any documents are seized under sub-section (3) shall be entitled to make copies thereof or take extracts there from in the presence of an officer of customs.”

(Emphasis Supplied)

35. Sub-section (1-A) of Section 110 provides the Central Government to issue appropriate notification in the Official Gazette for the disposal of the seized goods by the appropriate officer depending upon the nature of goods, depreciation in value of the goods with passage of time, constraints of storage space of the goods and other relevant considerations.

36. Section 124 deals with confiscation of the goods and such confiscation order could be passed after issue of notice to the owner of the goods. In this case, there is no quarrel with the fact that notice has been issued to the

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respective petitioners before passing the order of confiscation. Once an order of confiscation is passed upon seizure of the goods, sub-section (1-A) of Section 110 would come into play, which would be with regard to the disposal of the goods, which would be guided by the procedure notified by the Central Government. In the present case, no notification of the Central Government with regard to disposal of gold is produced before this Court. Further, it is to be noted that gold is not a perishable commodity, but it can be safely adjudged that gold is a valuable commodity, which increases in value and there is no depreciation in the value of gold and it is not a hazardous material. In this scenario, there is no procedure notified in which gold could be disposed of by the authorities.

37. In this scenario, reference is made to the Board's instruction No.22/2022 dated 6.9.2022, which prescribes the following procedure :-

"3.1.2 Whenever seized gold has to be returned on account of any order from a judicial forum and the gold has already been disposed of, the amount to be refunded in lieu of such gold shall be calculated as given below :

i. If the seizure is made in the customs area, calculation shall be based on the tariff value of gold on the date of transfer of such seized/confiscated gold to SPMCIL, and"



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38. It is the case of the respondent that the gold was seized within the customs area and, therefore, applying the aforesaid Board's instructions, the rate of gold was determined at the rate on the date of transfer of the said gold to SPMCIL and after deducting all the penalties, customs duty and redemption fine, the balance amount was returned to the petitioners.

39. However, the petitioners stake their claim on para-3 of CBEC Circular dated 14.02.2006, which mandates issuance of notice with regard to the sale of the goods, which were confiscated to the owner, in respect of which matters, appeal/legal remedies have not been exhausted by the owner of the goods, though it is countered by the respondent by placing reliance on para-2 of the very same circular by pointing out that such notice is contemplated only for goods, which have not been confiscated.

40. Before dealing with the said issue as to whether non issuance of notice would be a violation of principles of natural justice, it would be appropriate to refer to the said circular dated 14.02.2006 for better appreciation and the said circular is quoted hereunder :-

*"Sub: Requirement of issuing Notice to the owner of goods
- provisions of Section 150 of the Customs Act, 1962 – reg.*



An instance has recently been brought to the notice of the Board where seized goods were disposed of without issuing notice to the owner of the goods. The seizure having been set aside by the adjudicating authority, the owner of the goods sought their return but was advised to obtain the sale proceeds, which were significantly lower than the seizure value. In subsequent proceedings, the High Court has directed the refund of an amount higher than the sale proceeds, as well as payment of interest. The loss to the exchequer has resulted from a failure to comply with the requirements of Section 150 of the Customs Act, 1962.

2. It is impressed upon field formations that where any goods, not being confiscated goods, are to be sold under any provision of the Customs Act, they shall be sold by public auction or by tender or in any other manner after notice to the owner of the goods.

3. It is further clarified that the requirement to issue notice to the owner of the goods shall also obtain in case of goods that have been confiscated but in respect of which all appeal/legal remedies have not been exhausted by the owner of the goods.”

41. Staking their claim on the aforesaid circular, which, according to the respondent specifically deals with issuance of notice u/s 150 of the Act, it is the claim of the respondent that no notice is required to be issued to the owner of



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the goods, in respect of confiscation of goods, before it is sold upon such confiscation.

42. Section 150 speaks of goods, which are to be sold, but which have not been confiscated for which procedure has been prescribed and only in respect of such sale of goods, notice, according to the respondent is envisaged and the aforesaid circular deals only with such goods, which have not been confiscated.

43. True it is that the former portion of the circular speaks about the seized goods, which are being disposed of without notice to the owner of the goods, when such seizure has been set aside by the adjudicating authority, it casts heavy financial burden on the exchequer. However, not stopping there, paras-2 and 3 of the said circular speaks about the issuance of notice to the owner of the goods in respect of the goods which are not confiscated and also with respect to confiscated goods where the owner of the goods have not exhausted all the appeal/legal remedies.

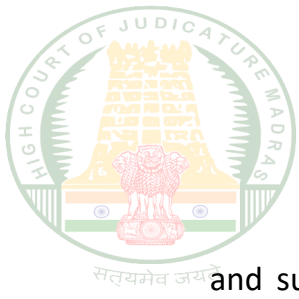
44. The present case is one of goods which are seized and, thereafter confiscated and, therefore, para-2 would not stand attracted. However, para-3 of



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the said circular specifically addresses the issue relating to confiscated goods and in respect of such of the goods, there is a specific direction where appeal/legal remedies have not been exhausted by the owner of the goods, notice has been directed to be issued. Though there is no specific mandate under the Act in respect of confiscated goods, however, through the aforesaid circular, the authorities have been directed to issue notice even in respect of goods, which have been confiscated. Therefore, the procedure u/s 150 of the Act has been enlarged through the circular by mandating the authorities to issue notice even in respect of goods, which have been confiscated. In such circumstance, it becomes necessary for the authority to issue notice to the owner of the goods, which have been confiscated, who have not exhausted all appeal/legal remedies.

45. In the present case, it is not in dispute that appeal was filed against the order of the adjudicating authority dated 25.4.2014 which resulted in the appellate order dated 28.10.2024. By virtue of the legal remedies open to the petitioners, the petitioners have filed revision petitions in which common order has been passed on 27.10.2021. The respondent cannot feign ignorance that no revision has been filed and even otherwise, legal remedies in the form of revision and a writ petition before this court were very much available to the petitioners



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and such being the case, applying the circular dated 14.2.2006, the authority, which is bound by the circular, of necessity, has to issue notice to the owner of the goods with regard to its sale by way of auction. However, the respondent hides behind the cloak of passage of more than a decade to claim that correspondence relating to the said transaction is not available. Curiously, while the respondent claims that it is not required to issue notice, in the same breadth also claims that correspondence is not traceable. This Court, taking judicial notice, could only concur that the act of the respondent would only lead to the irresistible conclusion that no notice has been issued to the petitioners notwithstanding the circular dated 14.2.2006, which mandates issuance of notice to the owner of the goods where the owner has not exhausted all the appeal/legal remedies. Definitely, there is clear violation of principles of natural justice, as the petitioners have not been provided with an opportunity of participating in the auction when on the date when auction was conducted, the import of gold is not prohibited, as the Gold (Control) Act, 1968 stood repealed with effect from 6.6.1990 and on and from the said date, import of gold is only restricted and regulated and not prohibited. Therefore, the sale of the gold through auction sale without putting the petitioners on notice is grossly improper, illegal and against the circular.



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46. Once this Court has come to the conclusion that the non-issuance of notice is fatal to the case of the respondent, necessarily, the next limb which has to be decided by this Court is with reference to the issue of redemption of the gold so confiscated and the resultant relief to which the petitioners would be entitled to.

47. Certain decisions have been placed before this Court on behalf of the petitioners to claim that either the gold should be returned back or the current market value should be paid. The decisions, which have been placed are passed by the Bombay High Court and the Delhi High Court. It is accepted across the Bar that the decisions of the other High Courts, would have only persuasive value, but it cannot be binding on this Court. Notwithstanding the same, it is to be pointed out that the facts in the said case also are similar and the findings rendered therein also converge on the same lines in which this Court is looking into the matter.



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48. In *Gor Sharian case (supra)*, the Division Bench of the Delhi High Court had occasion to consider a similar issue, wherein, dissecting the facts and law relating to redemption, the Division Bench held as under :-

“15. The chronology of events set out above would show that there is a triple benefit being claimed by the Department:

(i) Firstly, the detained gold has been disposed of long back without intimation to the Petitioner, at much less the value of the gold as of today - despite the Order-in-Appeal;

(ii) Despite having disposed of the detained gold, the redemption fine and penalty has been accepted by the Department;

(iii) Further, duty payable at 41.25% is being deducted without paying the amount of the value of the detained gold to the Petitioner.

16. In the opinion of this Court, this course of action would be completely contrary to law inasmuch as the Order-in-Appeal had clearly directed the release and re-export of the detained gold, subject to payment of redemption fine and penalty. The said order could not have been ignored by the Customs Department. Even if there was a lack of communication, the fact of disposal of the detained gold ought to have been communicated to the Court, when the W.P. (C) No. 6690/2023 was being heard and the final order therein was passed on 20th July, 2023.



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17. The disposal of the detained gold without intimation to the Petitioner is also contrary to law. Clause 3.1.2 of the Circular dated 6th September, 2022 would, therefore, have no application in the present case. The entire process followed by the Customs Department for the disposal of the detained gold, collecting the redemption fine and penalty as also deducting customs duty before payment of the value of the detained gold to the Petitioner would, therefore, not be tenable.

18. The Petitioner having succeeded in appeal before the Commissioner of Customs (Appeals) and the Customs Department having not challenged the Order-in-Appeal, the Petitioner cannot be made worse off at this stage.”

49. In this regard, the respondent presses into service the circular No.22/2022 dated 6.9.2022, which has already been extracted supra, to impress upon the court that it would be required to pay only the tariff value of gold on the date of transfer of such seized/confiscated gold to SPMCIL.

50. It is to be noted that when a circular has mandated issuance of notice even with regard to confiscated goods to be issued to the owner of the goods in which appeal/legal remedies have not been exhausted, it is incumbent on the department to follow the said circular and issue notice to the owner of the goods. However, without following the said circular the gold, which was seized



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and confiscated from the petitioners have been sold but the respondent wants to follow a circular of 2022, which prescribes the amount which is to be calculated and paid with regard to gold seized/confiscated, which have been sold.

51. When the procedure prescribed in the other circular issued by the department had been followed by the respondent, then the respondent can lay its hands on the circular of the year 2022 to claim that what is provided in the said circular would alone be payable. However, it cannot have selective application of circulars which would be beneficial to the respondent/department.

52. In this regard, Section 110 (1-A) has already been discussed and extracted supra, which confers authority on the Central Government to issue necessary notification in the Official Gazette specify the goods or class of goods which shall, as soon may be seized be disposed of. Specifically, it has laid emphasis that such disposal would be of goods which are perishable or hazardous in nature or any goods, which will depreciate in value with passage of time or there are constraints of storage space for the goods. In the present case, the goods, viz., gold, which has been brought by the petitioners do not fall within any of the type of goods which have been spelt out in Section 110 (1-A). Further,



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no notification of the Central Government has also been placed before this Court to show that the said items would have to be sold immediately.

53. The gold, which were seized/confiscated from the petitioners have been auction sold on 31.12.2014 through auction. It is to be noted that the gold, which were auction sold would definitely have been sold at the market value as was existing on the said date. Further, as held in *Gor Sharian case* by the Delhi High Court, the respondent has not only disposed of the confiscated gold, but the redemption fine and penalty has also been accepted and so also the duty payable is being deducted without paying the amount of the value of the detained gold.

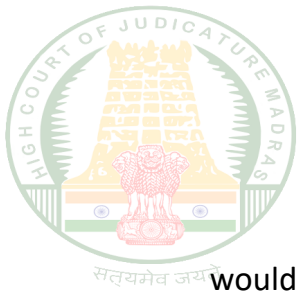
54. In this backdrop, the De Novo order of the Joint Commissioner dated 2.5.2025 has clearly stated that while the seized crude gold of 24K purity from the petitioners is confiscated as per Table – I u/s 111 (d) and (l) of the Act r/w Foreign Trade (Development and Regulation) Act, 1992, however, option has been given to the petitioners to have the seized crude gold of 24K purity redeemed on payment of redemption fine. It is to be stated at this juncture, that the circular dated 14.02.2006 mandating notice would have passed the mind of the Joint Commissioner and the nature of the commodity would also have had a



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bearing on the authority directing return of the seized gold upon payment of redemption fine. It could also be safely concluded that the said authority may not have been appraised of the sale of the gold way back in the year 2014 even when the appeals/legal remedies had still not been exhausted by the owners of the gold.

55. From the above order, in the absence of any intimation to the authority with regard to the disposal of the gold way back in the year 2014, there is a categorical direction, which is beneficial to the petitioners that they would be entitled to redeem the seized crude gold of 24K purity upon payment of respective redemption fine. Further, in the said order, there is a categorical finding recorded that the order of this Court in the earlier round of litigation with regard to rejection of the claim of the petitioners for redemption by the department has been overturned and the said finding has been accepted by the department in the present review in the De Novo proceeding. That being the admitted position, it is incumbent on the part of the respondent to either return the seized gold of 24K purity or the value as on date to the petitioners, which alone would be just and proper. It is to be pointed out that when redemption is permitted, even as per the terminology used, viz., '*redemption*', the petitioners



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would be entitled to the goods, which were seized from them. Once an order of redemption is passed, the respondent is bound to return back the seized commodity and failure on the part of the respondent, necessarily, value as on date in lieu of the said commodity has to be returned, as that alone would satisfy the option of redemption.

56. In this regard, once again, it would be useful to refer to Section 110 (1-A) of the Act, which prescribes that only goods of perishable or hazardous nature or goods, which depreciates in value due to passage of time or which could not be stored with reference to storage constraints alone shall be disposed of, of which necessary notification is published in the official gazette. The gold, which is the commodity seized in the present case, does not fall within any of the aforesaid categories and further no notification has also been issued in the official gazette.

57. Further, at the risk of repetition, it is also to be stressed that even the circular dated 14.2.2006 has referred to the instance of the department where seized goods were disposed of without issuing notice to the owner of the goods for lesser value and the order upon being set aside, had resulted in payment of



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higher value along with interest, which is higher than the sale proceeds realised by the department. Only to safeguard the interests of the department, the said circular, with clear intent to issue notice to the owner of the goods, irrespective of the goods being confiscated or not has been issued. However, giving a go-by to the aforesaid circular, the department has sold the gold so confiscated from the petitioners and now wants to turn back to another circular to claim that, that circular has been followed and the value of the gold as on the date it was sent to the Government Mint has been calculated and after deducting the penalties, customs duty and redemption fine payable by the petitioners, the balance is being offered in refund to the petitioners.

58. It is to be noted that approximately, 1659.200 grams of gold was seized from all the petitioners put together and on the date of its seizure, even according to the respondent, the amount realised on the said gold as on 31.12.2014 was Rs.43,84,467/-. But what is sought to be returned to the petitioners today is not even equivalent to the said sum, though the prices of gold has skyrocketed and as on date, the value of the gold confiscated from the petitioners hovers approximately around Rs.2.3 Crores.



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59. It should also not be lost sight of that the gold, which was seized from the petitioners was brought into the country, though not illegally, upon the repeal of Gold (Control) Act, but nevertheless it has come in an irregular manner for which the petitioners also have to bear the brunt as the department would also need to be provided with some respite, as both the entities are at fault for the said act.

60. Weighing the act of the petitioners and the respondent and balancing the scales so that none of the parties to the *lis* are prejudiced, this Court, exercising its extraordinary jurisdiction, is inclined to direct the respondent to pay the value of the gold at 24K purity of crude gold at the rate as was prevailing on the date when the De Novo order was passed, viz., 2.5.2025, which alone would render substantial justice to either party.

61. For the reasons aforesaid, the following directions are passed :-

- i) The writ petitions are allowed and the respective impugned orders passed by the respondent are set aside;*
- ii) The respondent is directed to pay the amount equivalent to the value of crude gold of 24K purity at the rate that was prevailing on the date when the De*



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Novo Order was passed, viz., 02.05.2025, less the amount computed towards redemption fine, customs duty and penalties as ordered in the De Novo order.

iii) The aforesaid payment shall be made directly to the bank account of the respective petitioners and the petitioners are directed to provide their bank details to the respondent within a period of one week from the date of receipt of a copy of this order.

iv) The respondent shall transfer the amount on the basis of the directions above to the petitioners within a period of six weeks from the date of receipt of a copy of this order, failing which the petitioners would be entitled to interest at 6% p.a. from 02.05.2025 till the date of payment.

Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

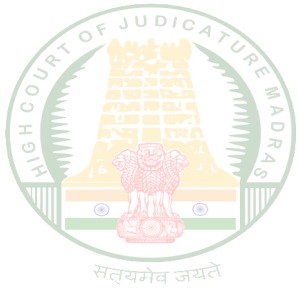
16.06.2026

Index : Yes / No

GLN

Note to Registry :

Registry is directed to incorporate all the cause title along with the prayer in the drafted order while issuing order copy to the parties.

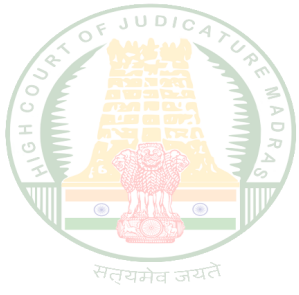


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To

The Assistant Commissioner of
Customs (Refunds-Air)
Chennai Airport Commissionerate
New Custom House
Meenambakkam
Chennai 600 016.



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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NOS.42236 OF 2025, ETC.**

**Pronounced on
16.06.2026**